HONOURABLE SMT.JUSTICE T.MEENA KUMARI

&

HONOURABLE SRI JUSTICE P.LAKSHMANA REDDY

WRIT APPEAL NO:2134 OF 2004

Date:24.8.2005

Between:

1.Ex.No:6601328 Sepoy Mohammad Fazlul Haq.

….Appellant

&

1.The Union of India through the Secretary Ministry of Defence & two others.

….Respondents.

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JUDGMENT (Per the Honourable Smt. Justice T.Meena Kumari.)

This writ appeal is filed by the appellant aggrieved by the order of the learned single Judge in W.P.No:21342 of 2004, dated 2.12.2004, under which the learned single Judge dismissed the writ petition with the observations as indicated therein

The appellant is the writ petitioner. He filed the writ petition seeking to declare the action of the 2nd respondent in wrongly invalidating the petitioner from service on 8.9.1968 on the ground of the disease Idiopathic Epilepsy as arbitrary and illegal and to direct the respondents to grant disability pension to the petitioner in terms of the Pension Regulations for the Army 1961 with effect from 8.9.1968 and pay the arrears.

The learned single Judge having observed that the question as to whether the actions of the respondents in discharging the petitioner from service, is based upon proper material or not, cannot be decided at this belated stage in view of the fact that the service documents might have been destroyed since the petitioner is a non pensioner in terms of para 595 of Regulations of Army, 1987 and it is also not in dispute that a person possessing less than 8 years of service in the military, is not eligible for pension, dismissed the writ petition. Having aggrieved by the same, the present writ appeal is preferred by the petitioner.

Heard the learned counsel.

We have perused the material available on record and the order impugned.

It is submitted by the learned counsel for the appellant that from the date of discharge from service on medical invalidation, the petitioner used submit his representations for grant of pension and with a pond hope, he waited till the

date of filing of the writ petition and that is the reason why the petitioner could not file the writ petition at an appropriate time.

The material on record goes to show that the petitioner was discharged from service in the year 1968 whereas the present writ petition has been preferred in the year 2004 i.e., nearly after 36 years. Except stating that in anticipation of the orders on his repeated representations, he could not proceed further and file the writ petition in time, no material is adduced before this Court to prove his bonafides. Therefore, We feel that there are no bonafides on the part of the petitioner in approaching this Court at this belated stage.

Even otherwise, irrespective of the fact as to whether he has preferred this writ petition at a belated stage, coming to the provisions under the Pension Regulations 1961, the minimum service has been stipulated as an eligibility for the disability pension. Section-IV of the Rules deals with the disability pensionary awards. Under Rule 198 of the Rules, the minimum period of qualifying service actually rendered and required for grant of invalid pension is 10 years. In the instant case, admittedly, the petitioner has completed 7 years, 11 months and 19 days service. From this angle also, the petitioner has not even fulfilled the eligibility criteria under the above provisions as rightly observed by the learned single Judge.

However, in the facts and circumstances of the case and considering the fact that the petitioner has rendered his services for 7 years 11 months and 19 days and he was discharged from service only on medical invalidation, We deem it appropriate to give liberty to the petitioner to make a representation to the 1st respondent seeking for grant of disability pension by relaxing the relevant rule.

Subject to the above observation, this writ appeal is disposed of.

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(T.MEENAKUMARI, J)

19th August, 2005

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(P.LAKSHMANA REDDY, J)

Gurc.

HONOURABLE SMT. JUSTICE T.MEENAKUMARI

&

HONOURABLE SRI JUSTICE P.LAKSHMANA REDDY

WRIT APPEAL No:2134 of 2004

(judgment delivered by Smt.Justice T.MeenaKumari)

19th August, 2005